REMARKS

I. Introduction

In response to the Office Action dated September 12, 2005, claims 18 and 36 have been cancelled and claims 1, 3-11, 16, 21-28, 34, 37, and 39-46 have been amended. Claims 1-17, 19-35, and 37-49 remain in the application. Re-examination and re-consideration of the application, as amended, is requested.

II. Claim Amendments

Applicant's attorney has made amendments to the claims as indicated above. These amendments were made solely for the purpose of clarifying the language of the claims, and were not required for purposes of patentability.

III. Office Action Objections

In paragraphs [1] and [2], the Office Action objected to the disclosure and claims due to grammatical errors. The Applicant thanks the Examiner for noting these errors, and has corrected them in the foregoing amendments to the specification and claims.

IV. The Cited References and the Subject Invention

A. The Candelore Reference

U.S. Publication No. 2002/0104081, published August 1, 2002 to Candelore et al. discloses a method and system to maintain relative statistics for creating automatically a list of favorites. A tuning event is detected. Relative statistics are maintained on one or more items related to the tuning event. A list of favorites is created automatically based on the maintained relative statistics. By using relative statistics, ranking of favorites can be maintained efficiently within limited system resources.

B. The Amano Reference

U.S. Patent No. 5,585,865, issued December 17, 1996 to Amano et al. discloses a television broadcast receiver which selects programs by genre and past viewing habits. A television receiver for receiving a television broadcast signal and tuning in a desired channel to receive a television signal

on which a broadcast program of a predetermined genre is broadcast, and that performs the steps of entering a first genre code of a desired program, extracting a second genre code included in the television broadcast signal, making a comparison between the first genre code and the second genre code for all receivable channels, and, if a program corresponding to the first genre code is being broadcast in a plurality of channels, tuning in a channel having a past record of highest frequency of reception.

C. The Wugofski Reference

U.S. Publication No. 2003/0056216, published March 20, 2003 to Wugofski et al. discloses a system for managing favorite channels. The system manages favorite channel lists on a television, personal computer or PC/TV convergence environment. The favorite channel lists are dynamically created by a computerized system rather than manually created by a user who specifically identifies a set of channels to be included in the favorite channel list. In one embodiment of the invention, the computerized system generates a list of favorite channels based on a theme selected by the user. In another embodiment of the invention, the computerized system generates a list of favorite channels based on the channels most frequently viewed by the user.

D. The Bedard Reference

U.S. Patent No. 5,801,747, issued September 1, 1998 to Bedard discloses a method and apparatus for creating a television viewer profile. The method and apparatus monitors television viewing activity to determine preferred categories of programming and preferred channels of a viewer. To facilitate viewer access to preferred programming, the display of an electronic program guide may be configured in accordance with the monitored viewing activity to provide fast access to the preferred programming. The monitored viewing activity may also be used to provide a lock-out feature to prevent or limit the viewing of specified channels or categories of programming, or to identify and provide information of interest from the internet. In yet another embodiment of the invention, a viewer may automatically circulate through his or her preferred programming, as determined by monitoring the viewing activity of that viewer.

E. Differences Between the Subject Invention and the Cited References

Candelore discloses a system that generates a "favorites" list that presents the top ten channels based on total accumulated viewing time. Candelore-like systems are not new, and are acknowledged in the Applicant's specification at page 3, lines 21-22.

The Applicant's invention, as described in the claims, is fundamentally different than the Candelore system. When expressed in words, the difference is subtle, but those words define a system distinctly different in operation and effect. The difference is perhaps most succinctly defined in terms of "channel surfing".

The Candelore system does indeed collect statistics based on tuning events, and presents a "favorites list" based on those statistics. However, Candelore is directed to a system in which the tuning events involve direct channel selection, not channel surfing (see paragraph [0044]).

One might be tempted to dismiss the difference between direct channel entry and channel surfing as insignificant or obvious ... but in the context of generating a favorites list, this is not the case. A "favorites list" generated from a viewers channel surfing habits would typically be distinctly different than the viewers habits generated from direct channel selection. For example, many television viewers turn a television on for background noise and watch it only intermittently if at all. Since the channel would remain selected for an extended period of time, this would cause the channel to be erroneously determined to be a "favorite" when in fact, the duration of the viewing is not indicative of the channel's "favorite" status.[1] Channel surfing, however is an activity in which the viewer is typically scanning the channels for something to watch, and is actively involved in making rapid channel selection yea/nay decisions.

Candelore, in fact, teaches away from generating favorites list via channel surfing input. Candelore is directed to a system that minimizes memory requirements by tracking time intervals in the order of five minutes. Channel surfing typically includes rapid changes from one channel to the next, and would be ignored by the Candelore system.

Candelore differs in at least another important respect. After accepting the user's input to channel surf an ordered scheduled of channels and using those inputs to prioritize channels, one

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[1] The Candelore system may solve this problem by allowing the user to set the system to deliberately ignore this channel, but this requires that the user access a typically complicated selection interface ... thus, it is not a significant improvement from prior art systems that allow the user to enter "favorites" directly.

embodiment of the Applicant's invention *reorders* the same scheduled list of channels, so that it may be presented to the user for further channel surfing. At best, Candelore presents a "favorites list" to the user, but that list is "auto-tuned" (see paragraph [0055]) by the system. Auto-tuning, of course, is incompatible with the channel-surfing aspects of the Applicants invention, and would distort any data collected thus far.

V. Office Action Prior Art Rejections

In paragraph (4), the Office Action rejected claims 1-5, 8-11, 15, 19-23, 26-28, 37-42, and 44-47 under 35 U.S.C. § 102(e) as anticipated by Candelore et al., U.S. Publication No. 2002/0104081 (Candelore).

With Respect to Claim 1, 19, and 37: Claim 1 recites:

> *A method of computing a schedule of channels, comprising the steps of:*
> *accepting a series of commands to tune a plurality of channels sequentially from an ordered schedule of channels;*
> *determining a duration of a time period during which each channel is tuned by the series of commands; and*
> *prioritizing the schedule of channels according to the duration of the time period during which each channel is tuned by the series of commands.*

As described above, Candelore does not disclose accepting a series of commands to tune a plurality of channels *sequentially from an ordered schedule of channels.* The Office Action appears to indicate that, this feature is inherent, this is not the case. Inherency "may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1269(Fed. Cir. 1991). Instead, to establish inherency, the extrinsic evidence "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." *Continental Can Co.*, 948 F.2d at 1268. Nothing in Candelore requires the system accept a series of commands to tune a plurality of channels *sequentially from an ordered schedule of* channel. In fact, Candelore teaches away from this. Accordingly, the Applicants respectfully suggest that the rejection under 35 U.S.C. § 102(e) be withdrawn.

Claims 19 and 37 recites features analogous to those of claim 1 and are patentable on the same basis.

With Respect to Claims 3, 21, and 39: Claim 3 recites:

The method of claim 1, wherein the step of prioritizing the schedule of channels according to a duration of a time period during which each channel is tuned comprises the step of:

reordering the ordered schedule of channels according to the duration of the time period between each of the series of commands.

Claim 3 recites that *the* ordered schedule of channels (that was surfed in the preceding steps) is *reordered.* The Candelore reference fails to disclose anything analogous to this feature. Candelore discloses presenting a favorites list to the user (see paragraph [0055]), but this favorite list is not surfed by the user.

Claims 21 and 39 recites analogous features and are patentable for the same reasons.

With Respect to Claims 8, 26, and 44 : Claim 8 recites the step of reordering the reordered schedule of channels in sequential order. In other words, back to the order they were presented before the reordering (based on the duration of the time period) took place. This allows the user to surf channels in sequential order again. Nothing in the Candelore reference even remotely suggests this feature.

Claims 26 and 44 recite analogous features and are patentable for the same reasons.

With Respect to Claims 10, 28, and 46: Claim 10 recites that the reordering of the reordered schedule of channels into sequential order is performed at a time associated with a change in a threshold number of media programs associated with the channels in the schedule of channels. For example, at the top of the hour when new media programs selections are available (see specification, page 4, lines 1-2). The phrase "change" in the phrase "change in a threshold number of the media programs associated with the channels in the schedule of channels" refers to a change in the media programs, not the threshold number.

Claims 28 and 46 are patentable for the same reasons.

In paragraph (5), the Office Action rejected claims 16 and 34 under 35 U.S.C. §102(b) as anticipated by Amano et al., U.S. Patent No. 5,585,865 (Amano). Applicant respectfully traverses these rejections.

With Respect to Claim 16: Claim 16 recites:

A method of computing a schedule of channels, comprising the steps of:

accepting data indicative of user interest in media programs transmitted on a plurality of channels;
accepting a series of commands to tune a plurality of channels sequentially from schedule of channels;
determining a duration of a time period during which each channel is tuned by the series of commands; and
prioritizing a schedule of channels having at least a subset of the plurality of channels according to the user interest in the media programs and the duration of the time period during which each channel is tuned by the series of commands.

Claim 16 has been amended to recite the features of claim 18, which was rejected unpatentable in view of Amano in view of Wugofski. Amano does not teach *determining a duration of a time period during which each channel is tuned by a series of commands to dune a plurality of channels sequentially from a schedule of channels.* Amano discloses an up-down button, but does not determine a duration of a time period during which each channel is tuned *by the series of commands tuning sequentially from the schedule of channels.* Like Candelore, Amano teaches that channel surfing is to be ignored (see col. 6, lines 47-51).

Furthermore, the Applicants respectfully disagree that there is any teaching to combine Amano with Wugofski. FIG. 5B and the associated text may show a system that displays both URLs and TV channels, but neither Wugofski nor Amano teach the notion of integrating two entirely different sources of data, one related to channel surfing and the other related to a click stream or URLs to generate favorites.

In paragraph (10), the Office Action rejected claims 6, 7, 24, 25, 29, 33, and 43 under 35 U.S.C. §103(a) as unpatentable over Candelore, in view of Bedard, U.S. Patent No. 5,801,747.

With Respect to Claims 6, 7, 24, 25, 29, 33, and 43: Claim 6 recites that the ordered schedule of channels is reordered according to the duration of the time period elapsed since the channel was last tuned. The Office Action suggests that Bedard, which is said to allow the viewer to see his most recently viewed favorites at the top of the array, teaches this feature. The Applicants disagree. Bedard does not allow the user to see most recently viewed favorites at the top of the array. Bedard teaches entering data at the top of an array, but that array is not presented to the user in that form as a list of "favorites."

VI. Dependent Claims

Dependent claims 2-15, 17, 18, 20-33, 35, 36, and 38-49 incorporate the limitations of their related independent claims, and are therefore patentable on this basis. In addition, these claims

recite novel elements even more remote from the cited references. Accordingly, the Applicants respectfully request that these claims be allowed as well.

VII. Conclusion

In view of the above, it is submitted that this application is now in good order for allowance and such allowance is respectfully solicited. Should the Examiner believe minor matters still remain that can be resolved in a telephone interview, the Examiner is urged to call Applicant's undersigned attorney.

Respectfully submitted,

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